

**Introduced by Senator Maldonado**

February 24, 2006

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An act to amend Sections 1798.92 and 1798.93 of the Civil Code, and to add Section 530.1 to the Penal Code, relating to telephone records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1651, as introduced, Maldonado. Telephone records: obtaining telephone calling pattern record or list.

(1) Existing law prohibits a telephone corporation, as defined, from making certain categories of personal information, including the subscriber's personal calling patterns, available to any other person or corporation without first obtaining the residential subscriber's consent in writing. Existing law provides that a subpoena duces tecum for personal records, as defined, maintained by a telephone corporation, is not valid or effective unless it includes a consent to release, signed by the consumer whose records are requested, consistent with this requirement. Other existing law requires that a provider of mobile telephony services, as defined, provide subscribers with a means by which to obtain reasonably current and available information on the subscriber's service usage.

Existing law makes the willful obtaining of personal identifying information, as defined, and use of that information for any unlawful purpose, a felony or misdemeanor. Existing law authorizes a person that has been injured as a result of a violation of this prohibition to bring an action against a claimant, as defined, to establish that they are a victim of identity theft, in connection with the claimant's claim against that person and to bring a cross-complaint if the claimant has brought an action to recover on a claim against the person. A person who proves that he or she is a victim of identity theft by a

preponderance of evidence is entitled to a judgment providing for actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate.

This bill would make the willful obtaining of another person's telephone calling pattern record or list, as defined, without the consent of that person, a public offense, punishable by fine or imprisonment or both, thereby imposing a state-mandated local program by creating a new crime. The bill would authorize a person to bring an action against any individual, business association, partnership, limited partnership, corporation, limited liability company, or other legal entity that willfully obtains a telephone calling pattern record or list of that person, and upon proof by a preponderance of evidence, recover actual damages, attorney's fees, costs, and any other equitable relief that the court deems appropriate.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1798.92 of the Civil Code is amended  
2 to read:  
3 1798.92. For the purposes of this title:  
4 (a) "Claimant" means a person who has or purports to have a  
5 claim for money or an interest in property in connection with a  
6 transaction procured through identity theft.  
7 (b) "Identity theft" means the unauthorized use of another  
8 person's personal identifying information to obtain credit, goods,  
9 services, money, or property.  
10 (c) "Personal identifying information" means a person's name,  
11 address, telephone number, driver's license number, social  
12 security number, place of employment, employee identification  
13 number, mother's maiden name, demand deposit account  
14 number, savings account number, or credit card number.

1 (d) “Telephone calling pattern record or list” includes any  
2 document or record of the telephone or other access numbers  
3 called by any person, or received by any person, whether the call  
4 was made from or to a telephone connected to the public  
5 switched telephone network, a cordless telephone, as defined in  
6 Section 632.6 of the Penal Code, a telephony device operating  
7 over the Internet utilizing voice over Internet protocol, a satellite  
8 telephone, or commercially available interconnected mobile  
9 phone service that provides access to the public switched  
10 telephone network via a mobile communication device employing  
11 radiowave technology to transmit calls, including cellular  
12 radiotelephone, broadband Personal Communications Services,  
13 and digital Specialized Mobile Radio.

14 ~~(d)~~

15 (e) “Victim of identity theft” means a person who had his or  
16 her personal identifying information used without authorization  
17 by another to obtain credit, goods, services, money, or property,  
18 and did not use or possess the credit, goods, services, money, or  
19 property obtained by the identity theft, and filed a police report in  
20 this regard pursuant to Section 530.5 of the Penal Code.

21 SEC. 2. Section 1798.93 of the Civil Code is amended to  
22 read:

23 1798.93. (a) A person may bring an action against a claimant  
24 to establish that the person is a victim of identity theft in  
25 connection with the claimant’s claim against that person. If the  
26 claimant has brought an action to recover on its claim against the  
27 person, the person may file a cross-complaint to establish that the  
28 person is a victim of identity theft in connection with the  
29 claimant’s claim.

30 (b) A person shall establish that he or she is a victim of  
31 identity theft by a preponderance of the evidence.

32 (c) A person who proves that he or she is a victim of identity  
33 theft, as defined in Section 530.5 of the Penal Code, as to a  
34 particular claim, shall be entitled to a judgment providing all of  
35 the following, as appropriate:

36 (1) A declaration that he or she is not obligated to the claimant  
37 on that claim.

38 (2) A declaration that any security interest or other interest the  
39 claimant had purportedly obtained in the victim’s property in  
40 connection with that claim is void and unenforceable.

1 (3) An injunction restraining the claimant from collecting or  
2 attempting to collect from the victim on that claim, from  
3 enforcing or attempting to enforce any security interest or other  
4 interest in the victim's property in connection with that claim, or  
5 from enforcing or executing on any judgment against the victim  
6 on that claim.

7 (4) If the victim has filed a cross-complaint against the  
8 claimant, the dismissal of any cause of action in the complaint  
9 filed by the claimant based on a claim which arose as a result of  
10 the identity theft.

11 (5) Actual damages, attorney's fees, and costs, and any  
12 equitable relief that the court deems appropriate. In order to  
13 recover actual damages or attorney's fees in an action or  
14 cross-complaint filed by a person alleging that he or she is a  
15 victim of identity theft, the person shall show that he or she  
16 provided written notice to the claimant that a situation of identity  
17 theft might exist, including, upon written request of the claimant,  
18 a valid copy of the police report or the Department of Motor  
19 Vehicles investigative report promptly filed pursuant to Section  
20 530.5 of the Penal Code at least 30 days prior to his or her filing  
21 of the action, or within his or her cross-complaint pursuant to this  
22 section.

23 (6) A civil penalty, in addition to any other damages, of up to  
24 thirty thousand dollars (\$30,000) if the victim establishes by  
25 clear and convincing evidence all of the following:

26 (A) That at least 30 days prior to filing an action or within the  
27 cross-complaint pursuant to this section, he or she provided  
28 written notice to the claimant at the address designated by the  
29 claimant for complaints related to credit reporting issues that a  
30 situation of identity theft might exist and explaining the basis for  
31 that belief.

32 (B) That the claimant failed to diligently investigate the  
33 victim's notification of a possible identity theft.

34 (C) That the claimant continued to pursue its claim against the  
35 victim after the claimant was presented with facts that were later  
36 held to entitle the victim to a judgment pursuant to this section.

37 (d) *A person may bring an action against any individual,*  
38 *business association, partnership, limited partnership,*  
39 *corporation, limited liability company, or other legal entity that*  
40 *willfully obtains a telephone calling pattern record or list of that*

1 *person, and upon proof by a preponderance of evidence, shall be*  
2 *entitled to judgment for actual damages, attorney's fees, costs,*  
3 *and any other equitable relief that the court deems appropriate.*

4 SEC. 3. Section 530.1 is added to the Penal Code, to read:

5 530.1. (a) Every person who willfully obtains a telephone  
6 calling pattern record or list of another person without that  
7 person's consent, is guilty of a public offense, and upon  
8 conviction therefor, shall be punished either by imprisonment in  
9 a county jail not to exceed one year, a fine not to exceed one  
10 thousand dollars (\$1,000), or both that imprisonment and fine, or  
11 by imprisonment in the state prison, a fine not to exceed ten  
12 thousand dollars (\$10,000), or both that imprisonment and fine.

13 (b) For purposes of this section:

14 (1) "Person" includes an individual, business association,  
15 partnership, limited partnership, corporation, limited liability  
16 company, or other legal entity.

17 (2) "Telephone calling pattern record or list" includes any  
18 document or record of the telephone or other access numbers  
19 called by any person, or received by any person, whether the call  
20 was made from or to a telephone connected to the public  
21 switched telephone network, a cordless telephone, as defined in  
22 Section 632.6, a telephony device operating over the Internet  
23 utilizing voice over Internet protocol, a satellite telephone, or  
24 commercially available interconnected mobile phone service that  
25 provides access to the public switched telephone network via a  
26 mobile communication device employing radiowave technology  
27 to transmit calls, including cellular radiotelephone, broadband  
28 Personal Communications Services, and digital Specialized  
29 Mobile Radio.

30 SEC. 4. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the  
35 penalty for a crime or infraction, within the meaning of Section  
36 17556 of the Government Code, or changes the definition of a  
37 crime within the meaning of Section 6 of Article XIII B of the  
38 California Constitution.

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